

KING & SPALDING

King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Tel: (212) 556-2100
Fax: (212) 556-2222
www.kslaw.com
Scott Davidson
Direct Dial: 212-556-2164
sdavidson@kslaw.com

September 30, 2015

**VIA E-MAIL TRANSMISSION
AND ECF FILING**

The Honorable Robert E. Gerber
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004

**Re: In re Motors Liquidation Company, et al.
Case No. 09-50026 (REG)**

Letter Regarding Update on Related Proceedings

Dear Judge Gerber:

King & Spalding LLP is co-counsel with Kirkland & Ellis LLP for General Motors LLC (“**New GM**”) in the above-referenced matter. Pursuant to Your Honor’s Endorsed Order dated May 5, 2015 [Dkt. No. 13131], we write to update the Court regarding developments in proceedings relating to New GM’s Motions to Enforce. Specifically, on Tuesday, September 29, 2015, the Ignition Switch Plaintiffs and the Ignition Switch Pre-Closing Accident Plaintiffs filed with the Second Circuit Court of Appeals the *Ignition Switch Plaintiffs’ And Ignition Switch Pre-Closing Accident Plaintiffs’ Unopposed Motion To Expedite These Appeal Proceedings* (“**Expedite Appeal Motion**”). A copy of the Expedite Appeal Motion is attached hereto.

Respectfully submitted,

/s/ Scott Davidson

Scott Davidson

SD/hs
Encl.

Honorable Robert E. Gerber
September 30, 2015
Page 2

cc: Edward S. Weisfelner
Howard Steel
Sander L. Esserman
Jonathan L. Flaxer
S. Preston Ricardo
Matthew J. Williams
Lisa H. Rubin
Keith Martorana
Daniel Golden
Deborah J. Newman
Jamison Diehl
William Weintraub
Steve W. Berman
Elizabeth J. Cabraser
Robert C. Hilliard
Gary Peller

MOTION INFORMATION STATEMENT

Docket Number(s): 15-2844(L), 15-2847(con), 15-2848(con) Caption [use short title]

Motion for: expedited appeal Elliott, et al. v. General Motors LLC, et al. (In re Motors Liquidation Co.)

Set forth below precise, complete statement of relief sought:

The moving parties respectfully request that this Court set a schedule for briefing and oral argument and grant an exception to its type-volume limitations according to the unopposed proposal described in the Motion.

Groman Plaintiffs; Participating Unitholders; Celestine Elliott, Lawrence Elliott, Berenice Summerville; State of Arizona, People of the State of California, acting by and through Orange County District Attorney Tony Rackauckas; Sesay Plaintiffs; Bledsoe Plaintiffs; Wilmington Trust Company; General Motors LLC

MOVING PARTY: Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs

☒ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☒ Appellee/Respondent

OPPOSING PARTY: and other parties

Gary Peller; Steve W. Berman; Arthur Jay Steinberg; Andrew Baker Bloomer; Richard C. Godfrey; Lisa H. Rubin; Aric H. Wu; Gabriel Gillett; Adam H. Offenhardt; Daniel H. Golden; Alexander H. Schmidt

MOVING ATTORNEY: Elizabeth J. Cabraser

OPPOSING ATTORNEY:

[name of attorney, with firm, address, phone number and e-mail]

Lieff Cabraser Heimann & Bernstein LLP, 275 Battery Street,
29th Floor, San Francisco, CA 94111-3339; 415-956-1000
ecabraser@lchb.com

See Attachment A for a list of attorneys for other parties

Court-Judge/Agency appealed from: U.S. Bankruptcy Court for the Southern District of New York/Judge Robert E. Gerber

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☐ No
☐ Yes ☐ No

Has this relief been previously sought in this Court?

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

/s/ Elizabeth J. Cabraser

Date: 9/29/2015

Service by:



CM/ECF



Other [Attach proof of service]

Attachment A
Attorneys for Other Parties

Gary Peller
600 New Jersey Avenue
NW Washington, DC 20001
202-862-9122
peller@law.georgetown.edu

Steve W. Berman
Hagens Berman Sobol Shapiro LLP
1918 8th Avenue, Suite 3300
Seattle, WA 98101
206-623-7292
steve@hbsslaw.com

Arthur Jay Steinberg
King & Spalding LLP
1185 Ave. of the Americas
New York, NY 10036
212-556-2158
asteinberg@kslaw.com

Andrew Baker Bloomer
Kirkland & Ellis LLP
300 North LaSalle Street, 38th Floor
Chicago, IL 60654
312-862-2482
andrew.bloomer@kirkland.com

Richard C. Godfrey
Kirkland & Ellis LLP
300 North LaSalle Street, Suite 6048
Chicago, IL 60654
312-861-2391
richard.godfrey@kirkland.com

Lisa H. Rubin
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
917-808-2038
lrubin@gibsondunn.com

Aric H. Wu
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
212-351-3820
awu@gibsondunn.com

Gabriel Gillett
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
202-351-2656
ggillett@gibsondunn.com

Adam H. Offenhartz
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
212-351-4000
aoffenhartz@gibsondunn.com

Daniel H. Golden
Akin Gump Strauss Hauer & Feld LLP
1 Bryant Park
New York, NY 10036
212-872-1000
dgolden@akingump.com

Alexander H. Schmidt
Wolf Haldenstein Adler
Freeman & Herz LLP
270 Madison Avenue
New York, NY 10016
212-545-4600
schmidt@whafh.com

No. 15-2844

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

IN RE: MOTORS LIQUIDATION COMPANY,
Debtor,

IGNITION SWITCH PLAINTIFFS,
IGNITION SWITCH PRE-CLOSING ACCIDENT PLAINTIFFS,
Appellees,

CELESTINE ELLIOTT, LAWRENCE ELLIOTT, BERENICE SUMMERVILLE,
Appellants-Cross-Appellees,

GROMAN PLAINTIFFS
Appellees,

GENERAL MOTORS LLC,
Appellee-Cross-Appellant,

WILMINGTON TRUST COMPANY,
Appellee-Cross-Appellant,

PARTICIPATING UNITHOLDERS,
Creditors-Appellees.

**IGNITION SWITCH PLAINTIFFS’
AND IGNITION SWITCH PRE-CLOSING ACCIDENT PLAINTIFFS’
UNOPPOSED MOTION TO EXPEDITE THESE APPEAL PROCEEDINGS**

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Steve W. Berman
Andrew Volk
HAGENS BERMAN
SOBOL SHAPIRO LLP
1918 Eighth Avenue,
Suite 3300
Seattle, WA 98101

Elizabeth J. Cabraser
LIEFF CABRASER
HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, California 94111
- and -
Rachel J. Geman
250 Hudson Street, 8th Floor
New York, New York 10013

Robert C. Hilliard
HILLIARD MUÑOZ
GONZALES LLP
719 S. Shoreline Boulevard,
Suite 500
Corpus Christi, Texas 78401

Edward S. Weisfelner
David J. Molton
May Orenstein
Howard S. Steel
BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
T: 212-209-4800
eweisfelner@brownrudnick.com
dmolton@brownrudnick.com
morenstein@brownrudnick.com
hsteel@brownrudnick.com

William P. Weintraub
Gregory W. Fox
GOODWIN PROCTER LLP
The New York Times Bldg.
620 Eighth Avenue
New York, New York 10018
T: 212-813-8800
wweintraub@goodwinprocter.com
gfox@goodwinprocter.com

Sander L. Esserman
STUTZMAN, BROMBERG,
ESSERMAN & PLIFKA,
A PROFESSIONAL
CORPORATION
2323 Bryan Street
Suite 2200
Dallas, Texas 75201
T: 214-969-4900
esserman@sbep-law.com

*Co-Lead Counsel and Designated Bankruptcy Counsel for
the Ignition Switch Plaintiffs and
the Ignition Switch Pre-Closing Accident Plaintiffs*

CORPORATE DISCLOSURE STATEMENT

No corporate disclosure statement is required for the Moving Plaintiffs, each of whom is an individual and not a corporate entity.

The Ignition Switch Plaintiffs and Ignition Switch Pre-Closing Accident Plaintiffs¹ (collectively, “Moving Plaintiffs”), by and through their undersigned counsel, respectfully submit this *Unopposed Motion to Expedite These Appeal Proceedings*. If the Court rules favorably on the Unopposed Motion for Redesignation as Appellants, which Moving Plaintiffs filed on September 25, 2015 (Dkt. No. 82 of Dkt. 15-2844(L)), Moving Plaintiffs will be among the appellants in this matter, along with the Elliott Plaintiffs (Dkt. No. 13179) and the States of California and Arizona (“States”) (who jointly filed a motion to intervene as appellants on September 16, 2015 in this Court, *see* Dkt. No. 14).

Specifically, the Moving Plaintiffs request on an unopposed basis that this Court set the following dates for these consolidated appeals (Case Nos. 15-2844; 15-2847; 15-2848):

- All deadlines before Opening Brief: no change;
- Principal Briefs of All Appellants: November 16, 2015²;
- Response Briefs of All Appellees and Cross-Appellants³: January 11,

¹ Capitalized terms not otherwise defined in this document have the meanings given in the bankruptcy court’s Decision of April 15, 2015. *See In re Motors Liquidation Co.*, Case No. 09-50026 (REG) (Bankr. S.D.N.Y.) (Dkt. No. 13109).

² Depending on the outcome of the pending motions in this Court, this would include the Moving Plaintiffs, the Elliott Plaintiffs (and their co-plaintiffs the Sesay and Bledsoe Plaintiffs, if their pending motion to intervene and join the appeal is granted), the States, and the Groman Plaintiffs.

³ Cross-Appellants here are New GM and the GUC Parties. Specifically, the Motors Liquidation Company GUC Trust (the “GUC Trust”) benefits certain

2016, provided that General Motors LLC (“New GM”) shall have up to 18,000 words for its Response Brief given that it will be responding to at least three Principal Briefs by Appellants, and possibly more ;

- Reply Briefs of All Appellants and Cross-Appellees: February 1, 2016;
- Reply Briefs for All Appellees and Cross-Appellants: February 22, 2016;
- Oral Argument: March 8, 2015, or the earliest possible date thereafter.

In support of this Motion, the Moving Plaintiffs state the following:

1. Federal Rule of Appellate Procedure 2 provides:

On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

Fed. R. App. P. 2. The Courts of Appeal have relied on Rule 2 for expedited proceedings. As Wright & Miller provide:

Rule 2 recognizes that there may be extraordinary situations, involving either the public interest or the concerns of expeditious judicial administration, where it becomes inappropriate to follow the “sometime[s]-leisurely pace” established by the Rules Courts of appeals have relied on Rule 2 when . . . ordering expedited briefing

Charles Alan Wright & Arthur R. Miller, 16A Fed. Prac. & Proc. Juris. § 3948 (4th ed. 2015) (footnotes omitted). This Court has regularly provided for expedited

creditors of Old GM. The “Participating Unitholders” are a subgroup of these creditors; Wilmington Trust Company acts as the GUC Trust’s trustee and administrator (collectively, these are the “GUC Parties”).

briefing schedules when the circumstances justify it. *See, e.g., ABC v. Koch*, 547 F. App'x 46, 48 n.1 (2013).

2. At a status conference on August 28, 2015, the MDL transferee court instructed Plaintiffs and New GM to request that this Court hear this appeal on an expedited basis. Specifically, the district court stated:

I have no authority[,] I am sorry to say[,] over the Circuit itself and I cannot tell it how quickly to proceed. However, I do have authority over you since you are appearing in front of me[,] and I would like you to make a motion to the Circuit requesting that the appeal be done on an expedited basis. That is to say, it is not up to me ultimately whether to grant that motion; but I am directing you to make the motion and to make clear my view that so long as bankruptcy issues are unresolved obviously I think hinders the ultimate resolution of the MDL and the proceedings before me and I think it would be in everybody's interests and my interests and the case management over the MDL for the bankruptcy proceedings to run their course as quickly as possible. So you are welcome to make my views known, not just welcome, in fact you are directed to make my views know[n] by making a motion for expedited appeal. Obviously it up to the Circuit . . . whether to grant that motion and then ultimately up to the Circuit in the first instance to take whatever time it needs to decide the appeals themselves.

Transcript of Aug. 28, 2015 Status Conf., *In re GM Ignition Switch*, No. 14-md-2543-JMF (S.D.N.Y.) (Furman, J.) (Dkt. No. 1366), at 5–6. The court reiterated its directive in a follow-up order. *See* Order No. 77 (Dkt. No. 1349) (“In light of the Second Circuit’s September 9, 2015 Order accepting a direct appeal of the Bankruptcy Court’s Judgment on New GM’s Motions to Enforce, the parties are directed to make a motion for expedited appeal. The parties are also to keep the

Court apprised regarding Bankruptcy proceedings that implicate the bellwether complaints.”).

3. The Moving Plaintiffs and the Cross-Appellants here were delayed in their ability to devise a schedule given the need to properly align the parties with their proper positions, as reflected in the pending Motion to Redesignate.

4. If that Motion is granted, expedited treatment of the issues raised in these consolidated appeals pursuant to the above-proposed schedule is warranted. In keeping with a reasonable but aggressive schedule, Judge Furman has ordered personal injury bellwether trials to begin in January, 2016.⁴ While allowing discovery to proceed as relevant to all cases, Judge Furman has stayed motion practice on the operative class action complaint on the economic loss claims pending resolution of the appeals at issue here. *See* Order No. 78 (Dkt. No. 1350) (setting schedule for first bellwether trial); Order No. 28 (Dkt. No. 474) (“defer[ring motion practice] until after [Bankruptcy] Judge Gerber’s decisions”). Moving Plaintiffs submit that among the principal remaining issues in the case are those presented in this appeal, which concern, among others, the interpretation of the Sale Order. This case is one in which the “public interest” in furthering the progress of litigation potentially affecting hundreds of thousands of consumers is served by an expedited appeal.

⁴ It is not anticipated that the appeal of the Bankruptcy Court’s June 1, 2015 Judgment will affect those personal injury bellwether trials.

5. The undersigned have conferred with all other counsel for parties to these consolidated appeal proceedings and has confirmed that no party opposes, and no party intends to make any filing in relation to, this Motion.

CONCLUSION

For the foregoing reasons, the Moving Plaintiffs respectfully request that this Court set the expedited schedule reflected on pages 1 and 2 hereof.

Dated: September 29, 2015 Respectfully submitted,

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

By: /s/ Elizabeth J. Cabraser

Elizabeth J. Cabraser
275 Battery Street, 29th Floor
San Francisco, California 94111
E: ecabraser@lchb.com

-and-

Rachel J. Geman
250 Hudson Street, 8th Floor
New York, New York 10013
E: rgeman@lchb.com

*Co-Lead Counsel with a primary focus on
Economic Loss Cases*

**HAGENS BERMAN SOBOL
SHAPIRO LLP**

Steve W. Berman
Andrew Volk
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

*Co-Lead Counsel with a primary focus on
Economic Loss Cases*

HILLIARD MUÑOZ GONZALES LLP

Robert C. Hilliard
719 S. Shoreline Boulevard, Suite 500
Corpus Christi, Texas 78401

*Co-Lead Counsel with a primary focus on
Personal Injury Cases*

BROWN RUDNICK

Edward S. Weisfelner
David J. Molton
May Orenstein
Howard S. Steel
Seven Times Square
New York, New York 10036
T: 212-209-4800
E: eweisfelner@brownrudnick.com
E: dmolton@brownrudnick.com
E: morenstein@brownrudnick.com
E: hsteel@brownrudnick.com

-and-

BROWN RUDNICK LLP

Edward S. Weisfelner
David J. Molton
May Orenstein
Howard S. Steel
BROWN RUDNICK LLP
Seven Times Square
New York, New York 10036
T: 212-209-4800
E: eweisfelner@brownrudnick.com
E: dmolton@brownrudnick.com
E: morenstein@brownrudnick.com
E: hsteel@brownrudnick.com

-and-

**STUTZMAN, BROMBERG,
ESSERMAN & PLIFKA, P.C.**

Sander L. Esserman
2323 Bryan Street, Suite 2200
Dallas, Texas 75201
T: 214-969-4900
E: esserman@sbep-law.com

*Co-Designated Counsel & Counsel to Ignition
Switch Plaintiffs, Represented in the MDL
Proceeding by Co-Lead Counsel*

GOODWIN PROCTER LLP

William P. Weintraub
Gregory W. Fox
The New York Times Bldg.
620 Eighth Avenue
New York, New York 10018
T: 212-813-8800
E: wwaintraub@goodwinprocter.com
E: gfox@goodwinprocter.com

*Co-Designated Counsel & Counsel to Ignition
Switch Pre-Closing Accident Plaintiffs,
Represented in the MDL Proceeding by Co-Lead
Counsel*